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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0631**

In re the Marriage of: Marisol Jimenez, petitioner,
Respondent,

vs.

Jose de Jesus Jimenez Perez,
Appellant.

**Filed January 30, 2023
Affirmed
Reyes, Judge**

Watonwan County District Court
File No. 83-FA-21-482

Kenneth R. White, Law Office of Kenneth R. White, P.C., Mankato, Minnesota; and

Michael Kircher, Sunde, Olson, Kircher and Zender, P.L.C., St. James, Minnesota (for
respondent)

Emmalie Brudzinski, RWI Law, P.L.L.C., Minneapolis, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Reyes, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this appeal from a marriage dissolution judgment, appellant-husband claims that
the district court deprived him of due process when it continued the remote trial without

his attendance. Husband also argues that the district court abused its discretion by awarding a property to wife based on an incomplete record. We affirm.

FACTS

Appellant-husband Jose de Jesus Jimenez Perez and respondent-wife Marisol Jimenez married in 2017. After husband's arrest for criminal sexual conduct involving a juvenile, the United States Citizenship and Immigration Services (the USCIS) deported him to Mexico in October 2019. The couple have been separated since January 6, 2020. Husband returned to the United States in April 2021 and was arrested again. He pleaded guilty to gross-misdemeanor criminal sexual conduct, and the USCIS deported him to Mexico for a second time. Wife filed a petition for dissolution of marriage on November 4, 2021. Husband resided in Mexico during the dissolution proceeding.

The district court held a remote pretrial conference on December 20, 2021, and scheduled a court trial for February 28, 2022. During the remote trial, husband encountered internet problems and could not join by Zoom. After husband's attorney told the district court that he spoke with husband that morning, the trial proceeded with wife as the only witness. During wife's testimony, husband tried to join the trial by phone but could only get through intermittently and could not hear most of wife's testimony. Despite that, husband's attorney confirmed that he and husband agreed with wife's representation regarding the properties owned by the parties, including a certain house (the house). The only dispute in the district court was the division of the house.

Husband bought the house for \$2,500 in 2014. The house was uninhabitable at the time. Husband and wife worked together both before and after their marriage to improve

it. They moved into the house in mid-2018 and lived there until husband's arrest in October 2019. At the time of their separation in January 2020, the house had a market value of \$14,700. Wife intended to retain the house and live in it.

Before the parties' marriage, wife had premarital retirement assets from which she gave \$6,000 to husband after his arrest. Husband used \$2,000 to pay for an immigration attorney and \$4,000 to buy a small bus which he still possesses.

In its dissolution order, the district court awarded all personal properties to the party in possession. Both parties would keep the bank accounts in their names and be responsible for their own debt. Based on its finding that both parties contributed time and effort to improve the house, the district court determined that the appreciation of the market value of the house of \$12,200 was marital property. The district court therefore awarded the house to wife after calculating in husband's premarital purchase money of \$2,500 and the \$6,000 husband received from wife's premarital retirement accounts. This appeal follows.

DECISION

I. Husband forfeited his due-process argument by failing to raise it before the district court.

Husband claims that the district court deprived him of due process when it went forward with the trial despite his absence. We are not persuaded.

Generally, appellate courts do not address matters not previously presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). This rule also applies in family cases. *See Rutz v. Rutz*, 644 N.W.2d 489, 494 (Minn. App. 2002), *rev. denied* (Minn. Jul. 16, 2002) (declining to address challenge to constitutionality

of statute raised for first time in family appeal). Here, because husband failed to raise his due-process claim in district court, that claim is not properly before this court. Further, husband does not attempt to explain why this court should address the question for the first time on appeal. We therefore decline to do so.¹

II. The district court properly awarded the house to wife, despite husband's absence at trial.

Husband contends that the district court (1) based its findings on an incomplete record because husband could not provide testimony or other evidence at trial; (2) erred by determining that the house was marital property; and (3) abused its discretion by awarding the house to wife. We disagree.

The district courts have “broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion.” *Atone v. Atone*, 645 N.W.2d 96, 100 (Minn. 2002). Whether property is marital or nonmarital is a question of law that appellate courts review de novo. *Id.* However, the reviewing courts must defer to the district courts’ underlying findings of fact unless they were clearly erroneous. *Id.* Generally, “marital property” is property acquired by parties to a dissolution proceeding during their marriage, while “nonmarital property” is property acquired by a party before the marriage, or the proceeds of such property are acquired by only one party

¹ Even if we were to address the merits of husband’s argument, we discern no due-process violation by the district court. When husband encountered internet problems and could not attend the remote trial, husband, through his attorney, acquiesced to the trial going forward after speaking with his attorney on the phone during wife’s testimony. If husband wanted to offer additional testimony, he could have requested a continuance, submitted more evidence, or moved for a new trial at the district court. He did none of these things.

during the marriage. *See* Minn. Stat. § 518.003, subd. 3(b) (2022) (defining marital and nonmarital property). “If both spouses have contributed time, effort or money to the nonmarital asset, or have actively participated in its maintenance, improvement or management, then any appreciation may be marital property, divisible upon dissolution.” *Swick v. Swick*, 467 N.W.2d 328, 331 (Minn. App. 1991), *rev. denied* (Minn. May 16, 1991).

First, despite husband’s absence at trial, his attorney attended on his behalf. The record also contradicts husband’s claim that the district court failed to make sufficient findings before awarding the house to wife. In its order, the district court found, based on wife’s testimony and evidence, that husband bought the house for \$2,500 in 2014, that the house was uninhabitable at the time, that the couple worked together both before and after their marriage to improve the house, that they moved into the house in mid-2018, that they lived there until husband’s arrest in October 2019, and that the house had a market value of \$14,700 at the time of their separation. The record supports the district court’s findings, which husband does not dispute on appeal. We therefore conclude that the district court’s findings of facts are not clearly erroneous or based on an incomplete record.

Next, because the record supports the district court’s finding that both parties contributed time, effort, and money to improve the house before and during their marriage, and because husband makes no claim regarding the *Schmitz* analysis², we conclude that the

² When a party purchases a real property before a marriage, and marital income has been used to reduce the mortgage balance during marriage, “the formula set forth in *Schmitz v. Schmitz*, 309 N.W.2d 748 (Minn.1981), and its progeny is the appropriate method to determine the marital and nonmarital interests in the property.” *Antone*, 645 N.W.2d 96,

district court properly treated the appreciation in value of \$12,200 as marital property and did not abuse its discretion by dividing that marital property equally between husband and wife. After subtracting husband's premarital interest of \$2,500, the district court determined that each party owns a marital interest of \$6,100 in the house. Because husband's share of the marital interest is offset by the \$6,000 he received from wife's nonmarital retirement account, the district court awarded the house to wife and ordered her to reimburse husband his purchase money of \$2,500 over a four-month period. We conclude that the district court did not abuse its discretion in the property division.

Affirmed.

at 98. The record does not indicate the existence of a mortgage, and husband does not claim that marital income has been used for a mortgage payment either.